test, by her statement that, for clothing the five children and herself, she used to get $20 to $30 every two or three months, whereas she might well have exaggerated the figure beyond an average of $10 per month. The deceased took only his evening meal at home, and I would deduct accordingly $30, leaving $220 as the net amount that went to the support of the family, or $2,640 per annum. Making due allowances for the uncertainties of life and the vicissitudes in the fortunes of trade and commerce, to the deceased's detriment as well as to his advantage, and taking into account acceleration of payment, I would assess the total compensation at $27,500.

The three elder children had been compelled to leave school, by reason of their father's death, and the two sons are now earning their own living, though it is not clear when they started to do so. In all the circumstances of this case I would apportion the $27,500 as follows:

To the plaintiff	$10,000
To the eldest child	1,000
To the second child	2,500
To the third child	3,500
To the fourth child	5,000
To the fifth child	5,500
	$27,500

In the course of the trial, when I pointed out to counsel for the plaintiff that no evidence had been given as to the claim for funeral expenses, Counsel for the defendants intimated that the sum claimed as spent would not be challenged. I accordingly award the sum of $883.30 claimed under this head.

The plaintiff will have the costs of this action.

Judgment for the plaintiff.

Solicitors: *Sen & Lim; Bannon & Bailey.*

Re ANSON CYCLE & MOTOR WORKS; Ex parte THE OFFICIAL ASSIGNEE

[C.A. (Rose C.J., Wee Chong Jin & Ambrose JJ.) April 23, 1960]

[Singapore — Civil Appeal No. 12 of 1959]

Bankruptcy — Avoidance of conveyance — Relation back of Official Assignee's title to act of bankruptcy — Bankruptcy Ordinance (Cap. 11), ss.51, 3(1)(b), 46, and 53.

Practice — Appeal — Time for entering appeal — Bankruptcy Rules, 1897, r.90.

This was an appeal from a judgment of the High Court declaring a conveyance by Ng Ming Yong, a bankrupt, to Lim Kim Boon absolutely void against the Official Assignee. The appellant was Lim Kim Boon, a secondary wife of the bankrupt, and the respondent was the Official Assignee.

The respondent raised a preliminary point: that the appeal was entered and the notice of appeal was served out of time. Rule 90 of the Bankruptcy Rules, 1897, provides that the time for entering the appeal and serving notice thereof on the respondent shall be fourteen days from the date of the signing entering or otherwise perfecting the judgment or order appealed from.

Held: although the judgment appealed against was pronounced on the 5th June, 1959, it was not perfected until the order was signed and sealed by the Registrar on the 19th June, 1959; the period of fourteen days allowed by Rule 90 should be calculated as from the 19th June and, as the notice of appeal was filed and served on the 25th June, Rule 90 was complied with.

Receiving and adjudication orders were made against Ng Ming Yong, sole proprietor of Anson Cycle & Motor Works on the 13th September, 1957. By a conveyance dated the 28th June, 1957, and for a consideration of $16,000 stated therein to have been paid to the bankrupt by the appellant, he conveyed to her a house known as No. 448, Serangoon Road, Singapore. On the 2nd June, 1959, the Official Assignee successfully moved the High Court to declare the conveyance absolutely void.

Held: (1) upon the true construction of section 51 of the Bankruptcy Ordinance the onus is upon the Official Assignee to prove that a conveyance which he is seeking to set aside thereunder was made either without valuable consideration or without good faith on the part of the purchaser; the Official Assignee failed to prove that the appellant did not give valuable consideration for the conveyance, but proved that the appellant was not acting in good faith when the conveyance was made to her; the conveyance was, therefore, absolutely void against the Official Assignee under section 51 of the Bankruptcy Ordinance;

(2) the conveyance was also void against the Official Assignee on the ground that it was a fraudulent conveyance and, therefore, an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance, that the bankruptcy related back to the act of bankruptcy as it was committed during the twelve months next preceding the adjudication, and that, therefore, the property conveyed to the appellant was the bankrupt's property at the commencement of his bankruptcy;

(3) section 53 of the Bankruptcy Ordinance did not protect the conveyance from relation back of the Official Assignee's title as the appellant did not act in good faith.

Cases referred to:—

(1) *In re Helsby*, [1894] 1 Q.B. 742.

(2) *In re Harrison*, [1955] 1 Ch. 260.

(3) *Official Assignee* v. *Khoo Saw Cheow*, [1931] A.C. 67; 2 M.C. 126, P.C.

(4) *Re Guan Hup Hin, Official Assignee* v. *Khoo Saw Cheow*, [1929] S.S.L.R. 75.

(5) *In re Tetley*, 3 Manson 226.

(6) *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505.

(7) *Shears* v. *Goddard*, [1896] 1 Q.B. 406.

CIVIL APPEAL IN BANKRUPTCY.

K. A. Seth for the appellant.

D. C. D'Cotta, Official Assignee, in person.

Ambrose J. (with whom **Rose C.J.** and **Wee Chong Jin J.** agreed): This is an appeal from a judgment of the High Court declaring a conveyance by Ng Ming Yong, a bankrupt, to Lim Kim Boon absolutely void against the Official Assignee. The appellant is Lim Kim Boon, a secondary wife of the bankrupt, and the respondent is the Official Assignee.

The respondent raises a preliminary point: that the appeal was entered and the notice of appeal was served out of time. Rule 90 of the Bankruptcy Rules, 1897, provides that the time for entering the appeal and serving notice thereof

on the respondent shall be fourteen days from the date of the signing entering or otherwise perfecting the judgment or order appealed from. The judgment appealed from was signed and pronounced on the 5th June, 1959. The last day for entering the appeal and serving notice of the appeal, according to the respondent, was fourteen days from that date, as that was the date from which the judgment took effect. As the notice of appeal was filed and served on the 25th June, the respondent reckons that it was out of time by six days.

In reply to this objection, counsel for the appellant submits that under Rule 90 the time for appealing against a judgment runs from the date when a perfect and operative order is made, and that a judgment is not perfected unless it is drawn up, passed and entered. Counsel relies on the case of *In re Helsby*,[1] which was a decision on Rule 130 of the English Bankruptcy Rules, 1886. This rule provided that no appeal from any order of the Court shall be brought after the expiration of twenty-one days from the time at which the order is signed, entered or otherwise perfected. In that case there was an appeal against an order of a Divisional Court, which was pronounced eleven days before the Registrar signed and sealed two engrossments of the order. It was held that time for appealing against the order of the Divisional Court ran from the time at which the order was perfected, and that the order was "perfected" within Rule 130 when it was signed and sealed by the Registrar. Counsel also relies on the case of *In re Harrison's Share Under a Settlement*.[2] In that case it was held by the Court of Appeal in England that although a judgment dates from the day of its pronouncement it is not perfected until drawn up, passed, and entered. Counsel points out that although the judgment appealed against was pronounced on the 5th June, 1959, the judgment was not perfected until the order was signed and sealed by the Registrar. It is not disputed that the order was so signed and sealed on the 19th June, 1959. Counsel argues that the period of fourteen days allowed by Rule 90 should be calculated as from the 19th June, and that, as the notice of appeal was filed and served on the 25th June, Rule 90 has been complied with.

In my opinion, the submission of counsel for the appellant is well founded and must, therefore, be accepted.

I turn now to the appeal itself. The circumstances giving rise to it are these. Receiving and adjudication orders were made against Ng Ming Yong, sole proprietor of Anson Cycle & Motor Works on the 13th September, 1957. By a conveyance dated the 28th June, 1957, and for a consideration of $16,000 stated therein to have been paid to the bankrupt by the appellant, he conveyed to her a house known as No. 448, Serangoon Road, Singapore. On the 2nd June, 1959, the Official Assignee moved the High Court to declare the conveyance absolutely void against the Official Assignee. The High Court did so on two grounds. The first ground was based on section 51 of the Bankruptcy Ordinance. I shall deal with the second ground later. The relevant portions of the section are:—

> 51(1). Any settlement of property, not being . . . . a settlement made in favour of a purchaser . . . . in good faith and for valuable consideration . . . . shall, if the settlor becomes bankrupt within two years after the date of the settlement, be absolutely void against the Official Assignee.
>
> (3) For the purposes of this section "settlement" includes any conveyance or transfer of property . . . .

The High Court held that it had not been sufficiently shown by the Official Assignee that the sum of $16,000 had not been paid by the appellant to the bankrupt; but that the conveyance was a fraudulent conveyance and, therefore, absolutely void against the Official Assignee. In effect it was decided that the Official Assignee had not proved that the conveyance was not made for valuable consideration; but that he had proved that the appellant was not acting in good faith when the conveyance was made to her.

Counsel for the appellant contends that the onus was upon the Official Assignee to prove not only that the conveyance was not made in good faith but also that it was not made for valuable consideration. Counsel's contention is based on the head-note of *Official Assignee of the Estate of Cheah Soo Tuan* v. *Khoo Saw Cheow*.[3] The head-note states that, in proceedings under section 50 of the Bankruptcy Ordinance of the Straits Settlements, the onus is upon the Official Assignee to prove that the conveyance was not made in good faith and for valuable consideration. The head-note, however, is not supported by the judgment of the Judicial Committee of the Privy Council, which merely, in effect, upholds the decision of the Court of Appeal of the Straits Settlements and states that the onus is upon the Official Assignee to prove that the conveyance is absolutely void. It is to be noted, however, that Deane J., in his judgment in that case [4] in the Court of Appeal (at p. 84) said:

> "A conveyance, therefore, to come within the section must clearly be a conveyance made in bad faith and without valuable consideration."

These words would seem to imply that a conveyance to be absolutely void under section 50 of the Bankruptcy Ordinance of the Straits Settlements (which corresponds to section 51 of the present Singapore Bankruptcy Ordinance) must not only be made in bad faith but also without valuable consideration. Such an implication would support the contention of counsel for the appellant. But with all due respect to Deane J., I am unable to accept it.

My own view is that under section 51 of the Bankruptcy Ordinance a conveyance made either in bad faith or without valuable consideration is absolutely void against the Official Assignee. This is clear from the case of *In re Tetley*,[5] where Vaughan Williams J. said (at p. 230):

> "The settlement was impeached on two grounds: one as being void under section 47 of the Bankruptcy Act, 1883, as not being a settlement for valuable consideration made in good faith, and secondly, as being fraudulent

under the Statute of Elizabeth, and made to defeat and delay creditors. The real question which I have to decide is, in both aspects, whether the settlement was made in good faith, or made to defeat and delay creditors. There is no doubt the settlement was made for valuable consideration."

Further support for my view is to be found in the case of *Mackintosh* v. *Pogose*,[6] where Stirling J., (at p. 509) having concluded that Mrs. Pogose was a purchaser for valuable consideration proceeded to consider whether she was a purchaser in good faith. This case makes it plain that if a settlement is not to be void under section 47 of the Bankruptcy Act, 1883, (which corresponds to section 51 of the present Singapore Bankruptcy Ordinance), there must be not only valuable consideration but also good faith on the part of the purchaser. Therefore, in my opinion, if the Official Assignee shows that either valuable consideration or good faith on the part of the purchaser was lacking, he has discharged the onus of proving that the settlement is void under section 51 of the Bankruptcy Ordinance.

The Official Assignee contends that the learned trial judge erred in holding that he had not sufficiently shown that the consideration of $16,000 was not paid by the appellant for the conveyance. To my mind it seems that, as no witnesses were examined before the trial judge, this Court is in as good a position as the Court below to weigh the evidence. This consists of affidavits and a certified copy of the notes of the appellant's examination under section 31 of the Bankruptcy Ordinance before Chua J., on the 15th September, 1958. At the hearing of the Official Assignee's motion he relied mainly on the appellant's deposition under section 31.

I, therefore, turn to consider the deposition. The following extract from it shows that the appellant is unreliable:

"My husband was the owner of No. 448, Serangoon Road. In January 1956 he sold the house to me . . . . The agreement was made sometime in June 1956 . . . . Six months passed between the time of sale and time of conveyance . . . . Now I say conveyance was in July 1957, the conveyance was in 1956. Now I say I can't remember."

In her deposition it is stated that she paid the bankrupt $16,000 as consideration for the conveyance. I am unable to believe this. Here is another extract from her deposition, which describes her means in her own words:

"My foster mother died sometime in 1946 and she left me jewellery worth about $1,000 . . . money $2,000 . . . I have never worked for a living. I was solely dependent on Ng Ming Yong (the bankrupt) . . . I saved money which I lent to my husband. I saved the $16,000. A few years earlier he gave me enough. I saved what I could . . . I did not accumulate $16,000. I sold my jewellery . . . I saved $50 per mensem. My jewellery sold for $3,000 to $4,000."

In this extract it will be observed that she contradicts herself by saying in the same breath that she saved the $16,000 which she paid to the bankrupt, and that she did not accumulate $16,000. There is another contradiction elsewhere in her deposition: first, she says that the bankrupt took $16,000 from her in small sums ranging from a few hundred dollars to $1,000 from January, 1956, to 28th June, 1957, that is, during a period of eighteen months; later she says that he took $16,000 from her in five months. It seems to me glaringly improbable that she had the means to pay $16,000 in the first five months of 1957. She admits elsewhere in her deposition that during 1956 and 1957 the bankrupt, on whom she was wholly dependent, did not give her enough money for her support. In those circumstances she would have needed a substantial part of her jewellery and savings for her own expenses during those two years. The impression created by the appellant's deposition is so unfavourable that it raises considerable doubt as to whether she paid the bankrupt any money at all as consideration for the conveyance. To avoid being unfair to her, however, I will draw the inference from her evidence that she lent her own money amounting to about $2,000 to the bankrupt to enable him to support her; and that when her money was exhausted she sold her jewellery which was worth about $4,000 to $5,000 from time to time and lent the proceeds to the bankrupt for the same purpose.

In the conveyance dated the 28th June, 1957, the consideration is stated to be $16,000 paid by the appellant to the bankrupt. According to the solicitors who prepared and attested the conveyance, the consideration did not pass through their hands. The solicitors were, however, given a receipt dated the 5th January, 1957, and signed by the bankrupt, which was in these terms:

"Re: Sale of land and premises situate at and known as No. 448, Serangoon Road, Singapore.

Received from Madam Lim Kim Boon of No. 9 Ava Road, Singapore, the sum of Dollars sixteen thousand ($16,000) only in cash being in payment of the purchase of the above property. I undertake to execute a proper conveyance in respect thereof to Madam Lim Kim Boon as soon as possible.

Dated this 5th day of January, 1957.

Sd: Ng Ming Yong (in Chinese)."

As regards this receipt the appellant has this to say in her deposition:

"The receipt for $16 000 from my husband was given to me in January 1956 . . . acknowledging receipt of $16,000 from me . . . in fact he had not received the $16,000 in full . . . The conveyance was not executed until six months later . . . . because husband had not received from me the full $16,000."

She admits that the receipt falsely alleges that $16,000 had been paid by her to the bankrupt at the date of the receipt. She in fact admits that there was collusion between her and the bankrupt as regards the amount stated in the receipt. It seems to me more probable than not that there was more collusion between them than that. To my mind it seems that the receipt was most probably made out in June, 1957, to give the solicitors who prepared the conveyance the false impression that the appellant had paid $16,000 to the bankrupt as consideration for the conveyance.

The salient probability is that the true consideration she gave for the conveyance was the

release of the bankrupt from a debt of $6,000 to $7,000. This view is supported to a certain extent by the fact that on the 29th July, 1957, she mortgaged the property conveyed to her for the sum of $6,000 which, according to her deposition, she kept for her own expenses. The release of the debt must be regarded as valuable consideration, although it may not have been an adequate consideration. The Official Assignee, in my opinion, has failed to prove that the appellant did not give valuable consideration for the conveyance.

It is necessary now to consider whether the appellant acted in good faith when the conveyance was made to her. Counsel for the appellant argues that the bankrupt had no intention of defrauding his creditors when he conveyed the property to the appellant on the 28th June, 1957; that the bankrupt became a trustee of the property for the appellant on the 5th January, 1957, when he agreed to sell the property to her for $16,000; that the agreement was evidenced by the receipt dated the 5th January, 1957; and that the conveyance was executed in pursuance of the agreement. In my opinion, the whole of the receipt must be treated as a sham as it falsely stated that $16,000 was received by the bankrupt from the appellant on the 5th January, 1957. The suggestion that the bankrupt was a trustee of the property for the appellant from the 5th January, 1957, cannot, therefore, be accepted. There was, in my view, collusion between the appellant and the bankrupt not only as regards the receipt but also as regards the conveyance. The bankrupt was insolvent at the time of the conveyance, and it is highly probable that his intention in executing the conveyance was to defeat, hinder or delay his creditors. From her collusion with the bankrupt it is reasonable to infer that the appellant shared the bankrupt's intention to defraud his creditors. She could not, therefore, be said to have been acting in good faith when the conveyance was made to her. For this reason I think the trial judge was right in declaring the conveyance absolutely void against the Official Assignee under section 51 of the Bankruptcy Ordinance.

I come now to the second ground on which the trial Judge held the conveyance to be absolutely void against the Official Assignee: that it was a fraudulent conveyance and, therefore, an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance; that the bankruptcy related back to the act of bankruptcy as it was committed during the twelve months next preceding the adjudication; and that, therefore, the property conveyed to the appellant was the bankrupt's property at the commencement of his bankruptcy and was divisible among his creditors. Counsel for the appellant contends that there was no evidence that the conveyance was a fraudulent conveyance. In my opinion, it was fraudulent for the reasons given in the preceding paragraph.

Lastly, counsel for the appellant invokes section 53 of the Bankruptcy Ordinance to protect the conveyance. This section, subject to certain exceptions, confers protection on certain transactions with the bankrupt on two conditions. The relevant parts of the section are:—

> "Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Ordinance shall invalidate in the case of a bankruptcy — any conveyance by the bankrupt for valuable consideration . . . .
>
> Provided that (i) the . . . conveyance . . . takes place before the date of the receiving order; and (ii) the person . . . to whom the . . . conveyance . . . was made has not, at the time of the . . . conveyance, notice of any available act of bankruptcy committed before that time".

It is to be noted that this section gives no protection to any conveyance which is void under section 51 of the Bankruptcy Ordinance. The question is whether it protects the conveyance from relation back of the Official Assignee's title. Both the conditions are complied with: the conveyance took place before the date of the receiving order; there was no evidence of any act of bankruptcy committed before the time of the conveyance; the appellant could not at the time of the conveyance, therefore, have had notice of something which did not exist. But besides the conditions laid down in the section, good faith is required on the part of the person to whom the conveyance was made. The Court will not afford protection to any transaction that is not entered in good faith. In *Shears* v. *Goddard*, [7] (at p. 411) Rigby L.J. speaking of section 49 of the Bankruptcy Act, 1883, (which corresponds to section 53 of the present Bankruptcy Ordinance) said:

> "I do not think that the section would render valid a transaction which was fraudulent on the part of the person dealing with the bankrupt. It seems to me to be necessarily involved in the terms of the section itself that the transaction in order to be protected must be a genuine transaction for valuable consideration entered into by the person who claims the protection given by the section bona fide, and not collusively with the debtor."

In that case it was held that a fraudulent sale of property by the bankrupt which came within the terms of the section in question was protected, although it was in itself an act of bankruptcy, as the purchasers had acted in good faith. In the present case I am satisfied that the appellant did not act in good faith and is, therefore, not entitled to the protection of section 53 of the Bankruptcy Ordinance.

For the above reasons I would dismiss the appeal.

Appeal dismissed.

Solicitors: *Sisson & Delay.*